

University of Michigan Journal of Law Reform Caveat

Volume 51 | Issue 3

2018

U.S. v. Warren, OH: The Case for Applying Aristotelian Modeling in Police Reform

Alicia McCaffrey

Follow this and additional works at: https://repository.law.umich.edu/mjlr_caveat



Part of the [Law Commons](#)

Recommended Citation

Alicia McCaffrey, *U.S. v. Warren, OH: The Case for Applying Aristotelian Modeling in Police Reform*, 51 U. MICH. J. L. REFORM CAVEAT 1 (2018).

Available at: https://repository.law.umich.edu/mjlr_caveat/vol51/iss3/1

This Article is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform Caveat by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

U.S. V. WARREN, OH: THE CASE FOR APPLYING ARISTOTELIAN MODELING IN POLICE REFORM

Alicia McCaffrey

Abstract:

Police reform scholarship tends to emphasize the bureaucratic nature of problems in policing, and, in turn, proposes administrative solutions, such as providing more training or critiquing specific language in a manual. This comment argues that instead of viewing policing problems as at their core administrative, we should be willing to view them, at least in part, as moral failings warranting ethical solutions. This perspective allows research on police reform to draw from a much larger corpus of existing ethical writings. This paper applies ethical theory to police reform in the specific context of U.S. v. Warren, arguing that the success of the reforms implemented in the Warren Police Department is due in large part to the department's use of Aristotle's theory of "ethical modeling": ethics is best taught by providing people with moral models whose behavior they can emulate. Other police departments can apply Aristotelian ethical theory by providing positive models from which officers can learn proper policing practices. This can be accomplished in several ways, such as expanding the use of mentoring programs, using more hypothetical role-playing in training, and publicizing stories of officers who properly de-escalated tense situations.

Introduction

Under the authority provided by 42 U.S.C. § 14141, the Department of Justice (DOJ) can file a lawsuit against a local police department for a "pattern or practice of conduct . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."¹ The DOJ filed a claim against the Warren Police Department (WPD) in 2012 using this statute.² While the Technical Assistance Letter that the DOJ issued as a result of its investigation was largely ineffective in facilitating reform, the Settlement Agreement which the lawsuit produced led to several reforms in the following years, most of which are largely regarded as successful.³ This paper examines

1. 42 U.S.C. 14141, (2012).

2. Complaint, U.S. v. City of Warren, No. 4:12-cv-00086 (N.D. Ohio Jan. 13, 2012), ECF No. 1, <https://www.clearinghouse.net/chDocs/public/PN-OH-0004-0004.pdf>.

3. See Letter from Jonas Geissler, Senior Trial Att'y, Special Litig. Section, U.S. Dep't of Justice, to Greg Hicks, Law Dir., City of Warren, Ohio app. (Dec. 18, 2013), <https://www.clearinghouse.net/chDocs/public/PN-OH-0004-0006.pdf> [hereinafter 2013 Compliance Letter] (listing the reforms taken); Telephone Interview with Eric Merkel, Chief of Police, Warren Police Dep't (Apr. 12, 2016).

U.S. v. Warren to identify why the Settlement Agreement reforms in Warren were so successful and how those factors can be used in the future to create meaningful reform in other police departments.

I argue that the predominant factor that led to success in Warren was the implementation of the Aristotelian idea that people learn ethical behavior by watching role models; the WPD implemented this idea by providing positive models of constitutional policing for officers to emulate. This modeling took several forms, such as the examples set by the leaders in the police department and the use of a mentorship program to train officers. This paper examines the Aristotelian principles in context. Part I focuses on the specific situation in Warren, Ohio, including the incidents that led to the investigation, the provisions of the Technical Assistance Letter and the Settlement Agreement, and the current state of compliance. Part II situates the practical discussion of the use of positive models within a wider ethical framework, arguing that one should view police reform at least in part as an ethical issue and thus should draw from ethical concepts when considering how to successfully implement police reform. Part III concludes by examining how the use of positive models can be used in other police reforms going forward.

I. The Case of *U.S. v. Warren*

A. Incidents Leading to Reform

The DOJ first began an investigation of police misconduct in Warren in 2003. Multiple incidents triggered the investigation, many of which were allegations of excessive force. Two incidents gained traction in the media. First, in March 2003, a bystander shot a video of WPD officers arrested two teenage sisters (ages 16 and 17).⁴ The tape showed one officer slamming one girl on the hood of the car with such force that the hood dented.⁵ Another officer hit the other sister on her side with his baton after she was handcuffed.⁶ The second incident caused significantly more public backlash, though. In June 2003, a neighbor videotaped an

4. Telephone Interview with Jack Morse, Trial Att’y, Special Litig. Section, U.S. Dep’t of Justice (Apr. 15, 2016).

5. *Id.*

6. Telephone Interview with Jack Morse, Trial Att’y, Special Litig. Section, U.S. Dep’t of Justice (Apr. 15, 2016).

incident involving police officers beating Lyndal Kimble in the presence of his wife and child.⁷ Officers had originally pulled Kimble over because he failed to use his turn signal.⁸ When police suspected that Kimble had hidden a bag of crack cocaine in his mouth they began beating him, also using a chemical spray to subdue him.⁹ A neighbor witnessing the incident called 911, saying, “I need an ambulance. We have cops beating the hell out of a black guy. This is not called for. This is bad.”¹⁰ The story, including the video, made national news.¹¹

In addition to these use of force issues, there were also instances of unconstitutional searches. In 2003 there was an internal investigation of the strip search of Dominic Gambone, which revealed that some officers had been conducting strip searches and body cavity searches on male suspects even for minor crimes.¹² Gambone received a \$75,000 settlement.¹³ Officers were also conducting searches that were against department policy, including searching suspects without the prior approval of a supervisor and without filing the necessary paperwork afterward.¹⁴

These issues caused community organizations to raise concerns that WPD practices were unconstitutional. Multiple local organizations, particularly those involved in the African-American community, including the NAACP, the Trumbull County Interdenominational Ministerial Alliance, and the Greater Warren-Youngstown Urban League, expressed concerns that the relationship between the WPD and the local community was one of distrust.¹⁵ The Urban League made the complaint to the DOJ that prompted the investigation.¹⁶

7. Richard Olivito, *Lyndal Kimble “I Can’t Breathe” Warren Oh White Police Beating June 03*, YOUTUBE (Dec. 19, 2014), <https://www.youtube.com/watch?v=IlruaNxZpU8>; see Telephone Interview with Jack Morse, *supra* note 6; Telephone Interview with Traci Sabau, Assistant Law Dir./Police Legal Advisor, Warren Police Dep’t (Apr. 12, 2016).

8. John Caniglia, *Warren’s Work with Justice Department Involving Excessive Force by Officers Offers Road Map for Cleveland*, CLEVELAND.COM (Dec. 4, 2014, 11:33 AM), http://www.cleveland.com/court-justice/index.ssf/2014/12/warrens_work_with_justice_depa.html.

9. *Id.*

10. *Id.*

11. See *Did Cops in Taped Arrest Get Too Rough?*, ABC NEWS (July 3, 2003), <http://abcnews.go.com/GMA/story?id=125003&page=1>.

12. Assoc. Press, *Warren Police Chief Reopens Strip Searches Investigation*, CLEVELAND 19 NEWS (2005), <http://www.cleveland19.com/story/3215447/warren-police-chief-reopens-strip-searches-investigation>

13. *Id.*

14. Telephone Interview with Traci Sabau, *supra* note 7.

15. *Id.*

16. Telephone Interview with Jack Morse, *supra* note 6.

While information about how the DOJ makes decisions about which cases to become involved in is confidential, in general the Assistant Attorney General or Deputy Attorneys General would review several justification memos regarding local organizations' requests for action.¹⁷ The Assistant Attorney General or the Deputy Attorneys General would then decide not to proceed with several of them.¹⁸ During the course of the Bush administration, the DOJ opened investigations in only twenty-one § 14141 allegations.¹⁹ Warren was likely chosen for two reasons: first because there was a sense that there were significant problems at the time in the police departments in various cities in the Rust Belt Region (investigations into the Cleveland and Chicago Police Departments were also opened around the same time), and second because of the media attention.²⁰ The DOJ began their investigation of the WPD in 2004.²¹

During its investigation, the DOJ discovered that the WPD also had a severely dysfunctional complaint system. Formally, there were two complaint systems: the Complaint Form for serious allegations and the Minor Incident Resolution Form for less serious allegations.²² The formal Complaint Form was used for both external and internal investigations.²³ The Minor Incident Resolution Form, however, was for all informal complaints that could be resolved without a full investigation, usually when the complaint alleged what the department considered "insignificant police violations."²⁴ The DOJ investigation found that the use of the informal system allowed for "inappropriate handling and resolution of allegations of constitutional violations,"²⁵ and, because of the lack of thorough investigation, often resulted in the WPD lacking critical information about potential officer misconduct that might expose the department to liability.²⁶ The language on the complaint form also discouraged people from filing complaints by warning them of potential liabil-

17. *Id.*

18. Telephone Interview with Jonas Geissler, Senior Trial Att'y, Special Litig. Section, U.S. Dep't of Justice (May 3, 2016).

19. See Simone Weichselbaum, *Policing the Police: As the Justice Department Pushes Reform, Some Changes Don't Last*, MARSHALL PROJECT (May 26, 2015, 6:12 PM), <https://www.themarshallproject.org/2015/04/23/policing-the-police#.HTHFiErpi>.

20. Telephone Interview with Jonathan Smith, Chief, Special Litig. Section, U.S. Dep't of Justice (Apr. 13, 2016).

21. Telephone Interview with Jack Morse, *supra* note 6.

22. Letter from Shanetta Y. Cutlar, Chief, Special Litig. Section, U.S. Dep't of Justice, to Michael O'Brien, Mayor, City of Warren, Ohio 9 (Mar. 2, 2006), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/wpd_talet_3-2-06.pdf [hereinafter Technical Assistance Letter].

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 9–13.

ity,²⁷ the problems of which were compounded by separate issues regarding how the complaint system was presented to potential complainants. The public generally knew that Police Chief John Mandopoulous would tell citizens who attempted to lodge a complaint to leave the building.²⁸

B. Technical Assistance Letter

In 2006 the DOJ issued a Technical Assistance Letter to the WPD.²⁹ The letter emphasized several areas in need of improvement. First, the policies regarding the use of force needed to be changed.³⁰ Specifically, there needed to be a policy stating that officers could draw their firearms only when an incident created a “reasonable belief that it may be necessary to use the firearm.”³¹ The Technical Assistance Letter also recommended the use of a deadly force review board that would report to and advise the police chief regarding the need for use of force training.³²

Second, in addition to use of force, the Technical Assistance Letter also addressed how officers conducted searches and implemented the complaint process. The DOJ determined that officers needed more training to adhere to the current policy regarding strip searches and body cavity searches.³³ With regard to the complaint process, many aspects of WPD’s complaint policy that were determined to be satisfactory still needed to be effectively implemented.³⁴ The DOJ also suggested that the WPD streamline their current complaint system (which contained both the formal and informal complaint processes) to one formal process that would be more accessible to the public.³⁵ To accomplish this, the DOJ suggested for them to remove language on the complaint form that warned complainants that they could be subject to civil or criminal charges if they knowingly filed an untrue complaint,³⁶ to accept any-

27. *See id.* at 11 (saying the complaint language “may inappropriately discourage the filing of complaints”).

28. Telephone Interview with Eric Merkel, *supra* note 3.

29. Technical Assistance Letter, *supra* note 25.

30. Technical Assistance Letter, *supra* note 25, at 3–4.

31. *Id.* at 5.

32. *Id.* at 6–7.

33. *Id.* at 7–8.

34. For example, the policy of allowing citizens to file complaint forms with any officer was not adhered to in practice. *Id.* at 10.

35. *Id.* at 9.

36. *Id.* at 11–12.

mous and third party complaints,³⁷ and to keep a “yearbook” available for complainants so that they could attempt to identify the officer or officers who were the subject of the complaint.³⁸ Finally, the DOJ recommended that Internal Affairs be willing to investigate additional misconduct discovered in the process of investigating a particular complaint, to proceed in a more timely manner, and to not provide officers with opportunities to corroborate each others’ written statements.³⁹

Third, the Technical Assistance Letter suggested for the WPD to introduce mechanisms to facilitate accountability. The DOJ recommended that the command staff and supervisors periodically review uses of force, probable causes for arrests, appropriateness of filed charges, and the reasonableness of the suspicion for searches.⁴⁰ Furthermore, the DOJ recommended that the WPD institute an Early Warning System in order to identify officers with repeated violations of excessive force and respond appropriately before a major incident occurred.⁴¹ Finally, in addition to all of the above suggestions, the Technical Assistance Letter emphasized the general need for more training to implement current policy and forthcoming policy changes. Specifically, the DOJ recommended that the WPD require that officers receive forty hours of in-service training each year.⁴²

The recommendations in the Technical Assistance Letter led to some improvement in the following years, but generally went unheeded and did not result in the substantial reforms which the DOJ anticipated. While there was a decrease in the number of public complaints regarding use of force, other recommendations had yet to be implemented.⁴³ There had been other highly publicized incidents of excessive force, including a controversial videotaped incident in 2007 where an officer tased Heidi Gill.⁴⁴ There, Gill had come out of a tavern and was combative with officers.⁴⁵ In response, an officer tased her several times.⁴⁶ The officer’s

37. *Id.* at 13.

38. *Id.* at 14.

39. *Id.* at 20.

40. *Id.* at 23.

41. *Id.* at 24–25.

42. *Id.* at 27.

43. Telephone Interview with Jonas Geissler, *supra* note 18.

44. BadCase, *Woman Tasered By Warren Ohio Police Officer*, YOUTUBE (Sept. 24, 2007), https://www.youtube.com/watch?v=vFH9kmKZX_o; *see also* Telephone Interview with Eric Merkel, *supra* note 3.

45. Wayne Drash, *Woman Says She Didn't Deserve Taser Treatment*, CNN (Sept. 26, 2007), <http://www.cnn.com/2007/US/09/26/tasered.woman/>.

46. Patty Collier, *Woman at Center of Warren Police Brutality Case Dies*, WKBN FIRST NEWS 27

tasing was caught on video, which then received national attention and prompted public outrage.⁴⁷ While the officer was eventually reinstated, Gill was awarded over \$300,000 in a settlement.⁴⁸ Seeing the need for further reform, the DOJ opted to implement a Settlement Agreement in 2012.⁴⁹ The decision to create an enforceable Settlement Agreement six years after the Technical Assistance Letter was the result of fairly regular reviews of the docket in an effort to resolve cases. While the review was simply a periodic review, rather than a direct result of the change in administration,⁵⁰ the decision to opt for a more enforceable agreement was a result of a change of approach to Section 14141 litigation. The Bush administration had relied heavily on generalized Technical Assistance Letters. The Obama administration shifted its focus on particularized issues and preferred to use more enforceable agreements to implement specific reforms.⁵¹

C. Settlement Agreement

The provisions of the Settlement Agreement were substantively very similar to those of the Technical Assistance Letter. The Settlement Agreement set out concrete recommendations to improve use of force policy, practice, and evaluation. For example, the DOJ mandated that the WPD provide a matrix regarding what level of force is appropriate in response to specific actions,⁵² equip officers with an intermediate weapon,⁵³ document uses of force in writing,⁵⁴ immediately inform supervi-

(Apr. 8, 2016, 5:35 AM), <http://wkbn.com/2016/04/07/woman-at-center-of-warren-police-brutality-case-dies/>.

47. See, e.g., Drash, *supra* note 45; *Tasered Ohio Woman Describes Agony*, CBS News (Sept. 25, 2007, 8:41 AM), <https://www.cbsnews.com/news/tasered-ohio-woman-describes-agony/>.

48. Collier, *supra* note 46.

49. Settlement Agreement, U.S. v. City of Warren, No. 4:12-cv-00086 (N.D. Ohio Jan. 26, 2012), ECF No. 4, <https://www.clearinghouse.net/chDocs/public/PN-OH-0004-0003.pdf>.

50. Telephone Interview with Jonas Geissler, *supra* note 18 (“It wasn’t a political determination. It was driven by the facts.”); Telephone Interview with Tim Mygatt, Special Counsel, Special Litig. Section, U.S. Dep’t of Justice (May 3, 2016) (“In general, we had been working on trying to evaluate the docket and we do that regularly. I can only speak as to when I became a manager in 2011. Jonathan [Smith] and I were going through the docket to look at the older cases just as a regular review. We don’t want the docket to stay idle generally. We had a number of old cases that weren’t being resolved.”).

51. Telephone Interview with Tim Mygatt, *supra* note 50.

52. Settlement Agreement, *supra* note 49, at 18; Telephone Interview with Tim Mygatt, Special Counsel, Special Litig. Section, U.S. Dep’t of Justice (May 3, 2016) (stating that the decision to implement an enforceable settlement agreement rather than to proceed with only the unenforceable technical assistance letter was “a difference in the way we started enforcing during the time period”).

53. *Id.* at 5.

sors of uses of force,⁵⁵ and prohibit officers from corroborating with each other on their written statements.⁵⁶ As for the complaint process, the DOJ ordered that the WPD accept complaints in several different forms,⁵⁷ adhere to specific investigation timelines,⁵⁸ and train the internal affairs department to conduct more thorough investigations.⁵⁹ The Settlement Agreement also set out specific curriculum requirements for officer training.⁶⁰ Additionally, the DOJ mandated the use of an Early Warning System to facilitate officer discipline or extra training at an earlier stage of misconduct.⁶¹ Finally, the agreement created accountability for the police department by implementing regular monitoring by the DOJ.⁶²

While it is difficult to categorize reforms into a simple dichotomy of “successful” or “unsuccessful,” the Settlement Agreement reforms in the WPD have had a fairly positive effect. There are quantitative measures of success that can demonstrate that the WPD has come into compliance with the Settlement Agreement rather quickly: by 2013, the WPD had substantially complied with seventeen provisions, partially complied with eighteen provisions, and had not complied with eleven provisions.⁶³ According to the latest Compliance Letter from January 2015, the WPD was in partial compliance with eighteen of the forty-seven Settlement Agreement provisions, as well as in substantial compliance with the other twenty-nine provisions.⁶⁴ Current Police Chief Eric Merkel indicated that they “were told by the DOJ that we were set to come into compliance [with the Settlement Agreement] quicker than any department in the nation.”⁶⁵

In addition to these more quantitative measures of success presented in the compliance letters and charts, there are also more qualitative measures which can demonstrate that reforms have dramatically im-

54. *Id.* at 7.

55. *Id.* at 8.

56. *Id.*

57. *Id.* at 9–10.

58. *Id.* at 10.

59. *See id.* at 11.

60. *Id.* at 19–20.

61. *Id.* at 13 (calling the system an “early intervention system”).

62. *Id.* at 20–21.

63. 2013 Compliance Letter, *supra* note 3.

64. Letter from Jack Morse, Trial Att’y, Special Litig. Section, U.S. Dep’t of Justice to Greg Hicks, Law Dir., City of Warren, Ohio 2 (Jan. 21, 2015), <https://www.clearinghouse.net/chDocs/public/PN-OH-0004-0007.pdf>.

65. Telephone Interview with Eric Merkel, *supra* note 3.

proved community relations. Traci Sabau, formerly an Assistant City Prosecutor who now works in the WPD to ensure its compliance, recounted a recent incident in which there was an officer shooting.⁶⁶ Within two days of this shooting, the police department held an open forum for all of the interested community organizations.⁶⁷ The WPD explained what it knew at that point regarding the circumstances of the shooting and reaffirmed its commitment to conduct a thorough investigation.⁶⁸ Because of this new community-oriented approach to handling questionable officer conduct—surely a result of the WPD’s ongoing cooperation with the DOJ—there was no backlash.⁶⁹ In Sabau’s words, “[There is an] understanding [in the police department] that being accountable makes it easier to do your job if the community isn’t questioning you. They aren’t fighting you as much. When you need to shoot someone, they understand.”⁷⁰

D. Reasons for Success

One can speculate as to why the Settlement Agreement was so effective for the WPD whereas the Technical Assistance Letter, which was very similar to the Settlement Agreement, was so ineffective. First, there are explicit textual differences between the documents that could help explain why this might have resulted. The Settlement Agreement contained more concrete goals;⁷¹ clearly defined goals surely facilitated changes in the WPD. The Settlement Agreement also contained fewer mandates than the Technical Assistance Letter recommended,⁷² so perhaps the compliance with the Settlement Agreement is a result of more realistic reform goals. Another factor that certainly contributed to why the Settlement Agreement was vastly more successful was that it contained provisions to allow for more DOJ monitoring to determine if the department remained in noncompliance; the threat of being held in contempt of court if the WPD did not comply also created an incentive to

66. Telephone Interview with Traci Sabau, *supra* note 7.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. For example, the Settlement Agreement mandated specific numbers of training hours and specific protocol requirements and deadlines for internal investigations. *See* Settlement Agreement, *supra* note 49 at 9–13.

72. For example, the suggestions about the Trumbull Housing Authority in the Technical Assistance Letter are not present in the Settlement Agreement. *Compare* Technical Assistance Letter, *supra* note 25, at 8 *with* Settlement Agreement, *supra* note 49.

effectuate change.⁷³

Second, in addition to these textual differences, another reason for success of the reforms can be attributed to the implementation of the Settlement Agreement. The WPD went through a fortunately-timed change in leadership as the Settlement Agreement was being implemented.⁷⁴ Whereas the past leadership at the time of the Technical Assistance Letter was not receptive to reform, the current WPD leadership recognized the need for change in their policies and practices and is thus very cooperative with the DOJ.⁷⁵ Factors as amorphous as leaders' attitudes and a reform-friendly "police culture" are very difficult to measure and perhaps even more difficult to recreate, especially when the DOJ is confronted with police department leadership that is more prone to react to reforms with hostility than with open arms. Still, it only makes sense that having leadership which models a willingness to improve current policies and practices can be one of the most indispensable means of achieving meaningful change within a police department.⁷⁶ As U.S. Attorney Steve Dettelbach said,

The most important things are cultural. You want to have a culture of responsibility and accountability in the police department, just like any business—a culture of compliance, and that starts at the top. The tone at the top, the leadership is very important in these kinds of situation[s]. And when you have good leadership and good tone it makes everything else easier. . . . If you have a culture of turning [all complaints] away, you'll never be able to diagnose problems before they get too big. You can have a great complaint procedure and safeguards for accountability but if you don't have that culture it will fail.⁷⁷

Officers at all levels, and particularly those in leadership roles, can model for more resistant officers a more cooperative and enthusiastic approach to implementing reforms for more resistant officers.

73. Settlement Agreement, *supra* note 49, at 20–23; Interview with Tim Mygatt, *supra* note 50.

74. See Ed Runyan, Mandopoulos retiring as Warren police chief, *The Vindicator* (April 10, 2009, 12:07 AM), <http://www.vindy.com/news/2009/apr/10/mandopoulos-retiring-as-warren-police-chief/> (recounting Chief Mandopoulos' retirement in April 2009).

75. See Telephone Interview with Jack Morse, Att'y, Special Litig. Section, U.S. Dep't of Justice (Apr. 11, 2016).

76. See Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57, 67 (2012) (discussing the importance of changing police culture in order to achieve sustainable reforms).

77. Telephone Interview with Steve Dettelbach, U.S. Att'y, N. Dist. of Ohio (Apr. 15, 2016).

In Warren, the opportunity to hire a new police chief created the space for a new, more cooperative leadership to bring the department into compliance with the Settlement Agreement. As previously alluded to, the former police chief, Chief Mandopoulos, did not welcome citizen complaints, nor was he particularly cooperative in implementing the reforms that the DOJ encouraged in the Technical Assistance Letter. Current police chief Eric Merkel explained,

There was no leadership and no discipline [when] John Mandopoulos was the chief. He would literally kick people [who were trying to file complaints] out of the building. During this time, obviously the African American community didn't like the police. And he wasn't the greatest spokesman for the police department. He was old school. . . . In [2006, the Department of Justice] issued the Technical Assistance Letter, which [Mandopoulos] didn't do much with.⁷⁸

In 2009, Mandopoulos agreed to retire and was replaced by Tim Bowers, who left shortly after.⁷⁹ Merkel then replaced Bowers in 2013.⁸⁰ By both the DOJ's and Warren government's accounts, Chief Merkel, as well as the other current command staff and supervisors, is very receptive to the reforms. According to Sabau, "This chief, he's very professional and progressive and open to dealing with the community. . . ."⁸¹ Jack Morse shared the same opinion, saying, "[Chief Merkel] is on board with reforming the police department in a very effective manner. And we're seeing change come to Warren that is both effective, and that's happening relatively quickly. . . . [T]he progress is to the credit of Chief Merkel and command staff who are on board."⁸²

In addition to replacing the former police chief, the WPD has replaced approximately a quarter of its sixty officers in the past three to four years.⁸³ Chief Merkel maintains that hiring new officers has also helped to encourage compliance because as opposed to having to convince officers who are resistant to the reforms to change their behavior,

78. Telephone Interview with Eric Merkel, *supra* note 3.

79. *Id.*

80. *Eric Merkel is Warren's new police chief*, The Vindicator (June 18, 2013, 6:09 PM) <http://www.vindy.com/news/2013/jun/18/eric-merkel-is-warren8217s-new-police-ch/>

81. Telephone Interview with Traci Sabau, *supra* note 7.

82. Telephone Interview with Jack Morse, Att'y, Special Litig. Section, U.S. Dep't of Justice (Apr. 11, 2016).

83. Telephone Interview with Eric Merkel, *supra* note 3.

“all [the new officers] know is the professional angle of [the DOJ Settlement Agreement].”⁸⁴ These new officers can be trained properly from the beginnings of their careers and are more willing to model enthusiasm for community oriented policing within the department.

A third contributing factor to the efficacy of the reforms is the WPD’s use of certain mentoring techniques in officer training. Though the Settlement Agreement did not explicitly mandate the use of a mentoring program to train younger officers, the WPD has implemented mentoring in both the orientation training of new officers as well as in response to concerns about an officer’s uses of force. New officers must go through a nine-month field training in which they work a shift with three different officers who each provide separate assessments of the new officer.⁸⁵ The department mentors officers who are not as new to the department.⁸⁶ When an officer has had multiple uses of force that seem to manifest not ill intent but lack of training, the WPD also pairs the officer with an officer who has an excellent use of force record. Sabau explains:

We go line by line through every single use of force and we do the same thing with Internal Affairs complaints. Discipline tends to be reserved for issues when it was intentional or [the officer had] bad intentions. If it’s mistakes, it’s training. We have a young officer where none of the situations were wrong but [there was] a pattern of bad tactics. So we put him with one of our most proactive and well versed officers to ride with him for a while. Show him how you do it, how you avoid getting into uses of force, because of different tactics.⁸⁷

The WPD has one officer, in particular, who has been with the department for many years and has a very good record for not using excessive force.⁸⁸ This officer unofficially specializes in mentoring the newer officers.⁸⁹

Thus, in addition to implementing the concrete proposals in the settlement agreement, the WPD has effectively created a police culture at

84. *Id.*

85. Telephone Interview with Traci Sabau, *supra* note 7.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

every level of the department hierarchy that recognizes the need for reforming policies and practices to achieve community-oriented policing, by using positive modeling in both police culture (by rehiring) and in training (by mentoring programs). This culture was created and is perpetuated by fortunately timed rehiring and the use of mentoring.

II. Police Culture and Mentoring as Aristotelian Modeling

Many articles attempting to isolate the factors that contribute to successful, long-lasting police reforms focus on accountability. In these articles, authors often focus on particular means by which to achieve accountability, such as through information gathering or community involvement.⁹⁰ Of course, the importance of creating accountability for police officers cannot be overstated. The DOJ brings § 14141 claims because there is a “pattern or practice of conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and other laws of the United States.”⁹¹ Essentially, a police department has behaved poorly yet has not independently instituted reforms. It is absolutely necessary to provide the appropriate discipline and training when officers engage in unconstitutional behavior, and that can only happen through mechanisms of accountability.

The discourse in these accountability-focused articles approaches problems in policing as bureaucratic problems that can be solved, at least in large part, by creating the proper set of incentives and disincentives. This outlook is likely accurate in many ways. Viewing problems in policing as bureaucratic systems of incentives, however, does not fully capture the depth and multi-faceted nature of police reform. One critique of this paradigm is that it overemphasizes the importance of workplace environment and largely neglects the importance of individual character. This is understandable because it is easier to conceptualize changing environments, and environments surely influence individual behavior. However, by focusing on the system of incentives and accountability to implement those incentives, we perhaps lose sight of the fact that there

90. See Mary D. Fan, *Panopticism for Police: Structural Reform Bargaining and Police Regulation by Data-Driven Surveillance*, 87 WASH. L. REV. 93, 123–34 (2012); Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. 815, 842–56 (1999); Alexandra Holmes, Note, *Bridging the Information Gap: The Department of Justice’s “Pattern or Practice” Suits and Community Organizations*, 92 TEXAS L. REV. 1241 (2014).
91. 42 U.S.C. 14141, (2012); see, e.g., Complaint, *supra* note 2, ¶ 1.

are other ways to facilitate reforms.

Another way to view the problem of unconstitutional policing that is not so widely advocated for in the literature is as an ethical issue. Excessive force, unreasonable searches, and the police officers' lack of empathy toward their communities are all moral problems. Whether such problems stem from ignorance of the law or from malicious intentions, the need for police officers to treat citizens with appropriate levels of respect and compassion is a problem well within the ethical sphere.

Thus, it is not surprising that one can draw from ethical theories when attempting to construct methods of reform. The method that was employed in Warren—the use of positive modeling—is one that has its roots in Aristotle's Virtue Ethics. Aristotle emphasizes the importance of ethical “role models” to demonstrate to students how to be a virtuous person:

Virtue then, being of two kinds, intellectual and moral, intellectual virtue in the main owes both its birth and its growth to teaching (for which reason it requires experience and time), while moral virtue comes about as a result of habit Again, it is from the same causes and by the same means that every virtue is both produced and destroyed, and similarly every art; for it is from playing the lyre that both good and bad lyre-players are produced. And the corresponding statement is true of builders and all the rest; men will be good or bad builders as a result of building well or badly. For if this were not so, there would have been no need of a teacher, but all men would have been born good or bad at their craft.⁹²

By intellectual virtue, Aristotle means qualities such as “knowledge, good judgment, and ‘practical wisdom,’” whereas by moral virtue he means qualities such as bravery, honesty, and fairness.⁹³ The distinction

92. ARISTOTLE, *NICHOMACHEAN ETHICS* 20–21 (W.D. Ross trans., Batoche Books, 1999) (ebook), <http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/aristotle/Ethics.pdf>; see also SIMON BLACKBURN, *BEING GOOD: A SHORT INTRODUCTION TO ETHICS* 113 (2d. ed. 2003) (“[Aristotle] emphasized that it takes education and practice in order to become virtuous. It does not just happen”); *Virtue Ethics*, INTERNET ENCYCLOPEDIA PHIL., <http://www.iep.utm.edu/virtue/> (last visited Oct. 26, 2017) (“Moral education and development is a major part of virtue ethics. Moral development, at least in its early stages, relies on the availability of good role models. The virtuous agent acts as a role model and the student of virtue emulates his or her example.”).

93. JONATHAN BARNES, *ARISTOTLE: A VERY SHORT INTRODUCTION* 125 (2000) (“Aristotle distinguishes between excellences of character and excellences of intellect. The former include both what we think of as moral virtue—courage, generosity, fair-mindedness, and so on—and also such dispo-

is not terribly important, though, in the context of police reform as reforms should encourage both kinds of virtue.

This method of teaching virtue differs from other methods in that it emphasizes the educational development involved in becoming virtuous. Whereas other systems of ethics, such as utilitarianism or Kantianism provide bases for virtuous behavior (such choosing an action based on what will bring about the most good for the most people, or performing your duty, respectively), Aristotelian virtue ethics provides not just one formula on which to base moral decisions, but instead provides an educational method to learn virtue.⁹⁴

In regard to both intellectual and moral virtue, Aristotle's view that one's habits create one's character creates an important role for those who exemplify proper behavior and instruct others as to how to behave properly. Teachers and role models help us form the habits necessary to cultivate both types of virtue. Thus, the importance of role models in the early stage of moral development cannot be understated. It is our role models who provide us with someone to emulate, and thus facilitate habits that aid in virtue.⁹⁵

A. Implementing Aristotle's Models of Virtue

There are various ways in which police departments can implement Aristotle's idea of providing positive models of virtue. Some are fairly simple and are already quite commonplace. Providing model policies to police departments required by settlement agreements to rewrite those policies implements positive modeling in a very basic sense. Additionally, as previously mentioned, police departments can use mentoring programs to show officers practical skills, such as how to de-escalate tense situations, when it is appropriate to use certain degrees of force, and when it is appropriate to conduct certain kinds of searches. Models can also more generally demonstrate attitudes of cooperation and enthusiasm for reform. While it can sometimes be difficult to find models for more senior members of the force, programs such as the DOJ's Community Oriented Policing Services Office can organize peer exchanges in an effort for more senior officers to work with other senior officers at differ-

sitions as a proper self-respect, an appropriate degree of ostentation, and wit; the latter include such things as knowledge, good judgment, 'practical wisdom.'").

94. See BLACKBURN, *supra* note 92, at 17, 86–93.

95. See *Virtue Ethics*, *supra* note 92.

ent departments.⁹⁶

Another fairly popular way to incorporate modeling is by using hypothetical scenarios in training. This can provide more memorable training by providing officers with past interaction experiences to rely on in the field.⁹⁷ By allowing officers to act out hypothetical scenarios during training, those officers in charge of training can not only provide critical feedback but can also draw attention to when an officer responds to an incident properly. Using hypothetical scenarios in training also provides a more public forum in which several other officers can observe and learn from an officer responding well in a hypothetical situation.⁹⁸ Thus, incorporating this kind of modeling in hypothetical training scenarios provides an even more efficient use of role models than mentoring does. While on-the-job mentoring might allow one officer the opportunity to observe a role model, training provides a forum in which several officers can observe.

Changing hiring practices to attract officers and police leadership who are enthusiastic toward community policing is also an important way to provide role models within a police department. The DOJ ordinarily cannot mandate that police leadership be forced to leave because the department has had a pattern of unconstitutional practices.⁹⁹ The situation in Warren was fortunate in that the uncooperative police chief had served in the department for decades and was ready to retire as the Settlement Agreement was about to be implemented.¹⁰⁰ Yet, because of natural turnover, particularly in larger cities where police chiefs are not likely to stay more than a couple years,¹⁰¹ there will likely be fairly frequent opportunities to fill leadership positions with officers who embrace reforms even in departments without such extraordinarily well-timed rehiring needs as the WPD. If the DOJ and the local government focus their resources to reform hiring practices and attract new officers who want to institute reforms and practice constitutional policing, they can help provide positive models in both the police leadership and in the

96. Telephone Interview with Tim Mygatt, *supra* note 50.

97. POLICE PSYCHOLOGY IN THE 21ST CENTURY 240 (Martin I. Kirk & Ellen M. Scrivner eds., 1995). The successful New York Police Department Recruit Training Program on gay and lesbian issues uses hypothetical models to train officers.

98. See POLICE SELECTION AND TRAINING 154 (J.C. Yuille ed., 1986).

99. Telephone Interview with Steve Dettelbach, *supra* note 77.

¹⁰⁰ Ed Runyan, *Mandopoulos Retiring as Warren Police Chief*, VINDICATOR (Apr. 10, 2009, 12:07 AM), <http://www.vindy.com/news/2009/apr/10/mandopoulos-retiring-as-warren-police-chief/> (stating that Mandopoulos had been with the department for 36 years).

¹⁰¹ Telephone Interview with Jonathan Smith, *supra* note 20.

lower levels.

One interesting way to incorporate modeling and also create positive incentives for officers to successfully avoid uses of force when possible is to publicize incidents when officers behaved well. The Portland Police Department recently made use of this technique. There, the DOJ was involved to help the Portland Police Department with crisis intervention process.¹⁰² During the DOJ involvement, the Portland Police Department's Chief intentionally sought press coverage when an officer resolved an issue without using force.¹⁰³ This created a series of stories in local papers recounting how officers behaved well.¹⁰⁴ This method of publicizing serves the dual purpose of improving community relations and (just as the use of hypothetical scenarios in training) providing a very efficient use of modeling.¹⁰⁵ Furthermore, this method provides an opportunity for several other officers to learn—and hopefully seek to replicate—from another officer's good conduct.¹⁰⁶ For Portland, this method seems to work. While the total number of use of force incidents does vary from quarter to quarter, there is a general trend in reduction, as there were 197 total force incidents in 2013,¹⁰⁷ whereas the number of cases involving force dropped to 150 in 2017.¹⁰⁸

B. Benefits to Ethical Modeling

There are many beneficial aspects to this ethical modeling approach to police reforms. First, it can be used regardless of the size of the department. Most of the methods detailed above were used in Warren, a police department of only approximately 60 officers.¹⁰⁹ A department does not need the immense manpower and resources of the New York Police Department or the Chicago Police Department to draw attention

102. *Id.*

103. *Id.*

104. *Id.*

105. This also demonstrates the interconnectedness of the various methods of using modeling. This kind of publicizing came as a result of the Portland Police Chief's own initiative. Without positive role models in police leadership, other uses of modeling to encourage reforms are not likely to occur. See Telephone Interview with Jonathan Smith, *supra* note 20 ("You have to have a very good chief who did it on their own.").

106. The Seattle Police Department also implements a similar program. Telephone Interview with Tim Mygatt, *supra* note 50.

107. JAMES H. DAKIN, PPB FORCE DATA SUMMARY REPORT (2013), <https://www.portlandoregon.gov/police/article/482934>.

108. MICHAEL KRANTZ ET AL., PPB FORCE ANALYSIS SUMMARY (2017), <https://www.portlandoregon.gov/police/article/639916>.

109. Telephone Interview with Eric Merkel, *supra* note 3.

to positive models of policing. Second, exploiting positive role models within the department is cost effective. When compared to the cost of hiring outside monitors, which can be quite expensive,¹¹⁰ mentorship, hypothetical scenarios, model policies, emphasizing rehiring, and drawing attention to good behavior are relatively inexpensive ways to encourage constitutional policing even in departments with very limited resources.

Finally, and perhaps most importantly, modeling is an effective educational tool that helps to improve the morale of the police department. Various educational studies have found that modeling appropriate behavior produces positive educational results.¹¹¹ The encouraging nature of positive modeling also helps to improve officer morale. Discipline is certainly necessary to address problems in policing; police departments do need to create a set of incentives that discourages poor behavior and encourages good behavior, and discipline accomplishes half of that purpose. However, if departments overemphasize discipline at the expense of providing positive models, they can discourage officers and cause them to be less enthusiastic about the need to ensure constitutional practices.¹¹²

Some may feel that viewing the problem of police reform as an ethical issue rather than a technocratic issue is akin to academic hand-waving that does not actually provide any substantive insight into the issue of constitutional policing. After all, viewing the problem as one which creates the correct set of incentives allows plenty of room to institute not only negative incentives but positive incentives as well; police departments can still focus on rewarding community-oriented policing without bringing in the seemingly unrelated field of ethics. However, viewing the problem of police reform as an ethical issue illuminates the multi-layered nature of policing problems, which come, not just from bureaucratic failures, but also from failures to teach ethical behavior.

110. Telephone Interview with Traci Sabau, *supra* note 7.

111. See Cyndy Scheibe, *Piaget and Power Rangers: What Can Theories of Developmental Psychology Tell Us about Children and Media*, in QUESTIONS ABOUT YOUTH AND THE MEDIA 61, 63 (S.R. Mazzarella ed., 2007); Spencer H. Holland, *Positive Role Models for Primary-Grade Black Inner City Males*, 25 EQUITY & EXCELLENCE 40 (1991); Christopher M. Johnson, *The Effect of Positive Models of Inclusion On Band Students' Attitudinal Statements Regarding the Integration of Students with Disabilities*, 45 J. RESEARCH MUSIC EDUC. 173 (1997).

112. Telephone Interview with Jonathan Smith, *supra* note 20 (“When you talk to officers they always think they’ll be hung out to dry politically. They feel they’re scapegoats. Have the Department holds itself accountable, and now the process has some integrity. It really is about making the department a different place, and the positive rewards, I’m not sure people have kind of figured out the right way to fully recognize that.”).

Additionally, viewing the problem as at least in part ethical allows those who pursue police reform to draw ideas from the expansive field of ethical scholarship rather than being limited to the rather recent scholarship regarding bureaucratic incentives.

Further, the role model component of Aristotelian virtue ethics essentially makes an educational claim that is not encompassed by simply setting up positive incentives in addition to negative incentives. The role model format goes beyond providing rewards to officers regarding what to do; it also takes account of the fact that learning, especially learning that is more than simply recalling a fact but instead must manifest itself through conduct in high-pressure situations, can at sometimes be better facilitated by imitation rather than by particularized verbal instructions.¹¹³

Some might also argue that in fact the problem is generally not an ethical problem but one of ignorance; perhaps in general police officers police unconstitutionally not out of malice but because they are not aware of the proper standards.¹¹⁴ This point overgeneralizes and once again neglects to take in to consideration all forms of police misconduct. While many instances of unconstitutional policing might result from ignorance of the law (i.e. those involving the proper standard for conducting certain searches), some instances (particularly use-of-force issues) do seem to carry a substantial moral component. Additionally, role models likely do provide an effective educational tool even in those instances

113. See, e.g., S. A. Al-Abood et al., *Specificity of Task Constraints and Effects of Visual Demonstrations and Verbal Instructions in Directing Learners' Search During Skill Acquisition*, 33 J. MOT. BEHAV. 295 (2001); Marc R. Dickey, *A Review of Research on Modeling in Music Teaching and Learning*, 113 BULL. COUNCIL RES. MUSIC EDUC. 27, 30 (1992); Marianne Haguenaer et al., *Short-term Effects of Using Verbal Instructions and Demonstration at the Beginning of Learning a Complex Skill in Figure Skating*, 100 PERCEPTUAL & MOTOR SKILLS 179 (2005). But see Susan Palmiter & Jay Elkerton, *Animated Demonstrations Vs. Written Instructions for Learning Procedural Tasks: A Preliminary Investigation*, 34 INT'L J. MAN-MACHINE STUD. 687 (1991) (showing that demonstration taught skills more quickly than verbal instruction, but casts doubt on whether demonstration alone can provide the foundation to confront new scenarios).

114. See, e.g., *Floyd v. City of New York*, 959 F. Supp. 2d 650, 658–63 (S.D.N.Y. 2013) (referencing lack of and incorrect training as a primary reason for the New York Police Department's unconstitutional stop and frisk practices); CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD P. HAIDER-MARKEL, *PULLED OVER 7* (2014) ("Instead, attention should focus on institutionalized practice: how the structure of incentives, training, and policy in contemporary policing makes it more likely that officers will act on the basis of bigotry . . ."); PETER FINN, U.S. DEP'T OF JUSTICE, *CITIZEN REVIEW OF POLICE: APPROACHES AND IMPLEMENTATION* 5 (2001) (recounting three avenues—policy, supervision, and training failure—by which citizen review boards find the department responsible for the individual officer's misconduct, all of which pertain to need to disseminate more knowledge).

in which police misconduct may not seem to primarily result from moral failing. While the empirical data regarding the effectiveness of using role models compared to incident reporting is not available, there is a compelling argument that the use of positive models was one of the primary reasons why the reforms following the Settlement Agreement in Warren were so successful.

III. Conclusion

When one turns on the news only to hear another story of horribly egregious acts committed by the police, it is clear that the question of how to reform police conduct is largely an ethical question: how do we teach police officers to behave better? Thus, it is no surprise that ethical theories can offer some insight as to how to go about police reform. According to Aristotle's philosophy of Virtue Ethics, we can facilitate ethical behavior in others by providing positive role models. This idea can be translated into the context of policing in several different ways, some of which are quite simple to implement and rather widespread now (such as the use of model policies and the incorporation of hypothetical scenarios into officer training), while others are a bit more complex and less universal (such as the emphasis on rehiring and publicizing stories in which officers successfully dealt with a situation without having to resort to force). Because creating situations in which officers in need of training can learn from role models requires no minimum amount of monetary resources or manpower, police departments of any size can make use of Aristotle's modeling.

While it is of course necessary to provide accountability for police officers, it is also essential to frame reforms not only in the negative. Rather than exclusively focusing on what conduct is not permitted, we should also emphasize positive statements about what conduct is encouraged and provide models to demonstrate desired behavior. There is no doubt that creating accountability and enforcing discipline helps to influence officer behavior; but, if police departments and the DOJ do not take advantage of providing positive examples for officers to emulate, they are using only half of the methods available to them to create meaningful reforms.